IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 18273 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

JAGDISHBHAI PARBHUBHAI PATEL - Petitioner(s)
Versus

==========

Appearance :
MS HETAVI SANCHETI for MR CHETAN K PANDYA for Petitioner(s) : 1,
MR NEERAJ SONI, AGP for Respondent(s) : 1,
None for Respondent(s) : 2 - 3.

==========

THE STATE OF GUJARAT & 2 - Respondent(s)

CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 24/07/2007

ORAL JUDGMENT

Leave to join Talati-cum-Mantri, village Bagumara, Taluka Palsana as party respondent.

1. **Rule**. Mr. Neeraj Soni, learned A.G.P., waives service of rule on behalf of the respondents. At the request of the learned advocates for the parties, the matter is taken up for final hearing today.

2. The petitioner has approached this Court for obtaining appropriate direction on the respondents and in particular respondents no. 2 and 4 requiring them to carry out necessary correction in the birth register as well as birth certificate of the petitioner. It is the say of the petitioner that he was born at village Bagumara, Taluka Palsana in District Surat on 13/10/1956. According to him, due to inadvertence on the part of the authority, in the register maintained under the Births, Deaths and Marriages Registration Act, 1886, the entry with regard to his gender was erroneously mentioned. Instead of male child, entry was made as female child. The petitioner's grievance is that when he learnt about the discrepancy, he made necessary request to respondent no. 2 by submitting an application along with all the relevant material to make necessary change in the birth register. However, by communication addressed to Laxmiben, wife of Parbhubhai Patel i.e., mother of the petitioner, respondent no. 2 informed her that it was not possible to make the correction since there is no provision in the Act to make amendment in the birth register. Against the said decision, the petitioner has now approached this Court.

3. Ms. Hetavi Sancheti, learned advocate appearing for Mr. CK Pandya for the petitioner has submitted that respondent no. 2 has failed to appreciate that the Act as well as Rules framed thereunder empowered the

authority to carry out the necessary correction. In support of her submission she has placed reliance on the provisions of section 15 of the Births & Deaths Registration Act, 1969 [hereinafter referred to as 'the Act'] as well as the Gujarat Registration of Births and Deaths Rules, 2004 [hereinafter referred to as 'the Rules']. According to her, a combined reading of both the provisions would amply make it clear that respondent has power to carry out the necessary correction. She has further placed reliance on the notification dated 1st April, 1970 to submit that by the said notification respondent no. 4 has been conferred upon powers to act as Registrar of the local area i.e., the area within the jurisdiction of Bagumara Gram Panchayat.

3.1. As against that, Mr. Neeraj Soni, Ld. AGP has tried to support the decision of respondent no. 2.

3.2. Section 15 of the Act reads as under :-

> **"Section 15: Correction or cancellation of entry in the register of births and deaths.**
>
> If it is proved to the satisfaction of the Registrar that any entry of a birth or death in any register kept by him under this Act is erroneous in form or substance, or has been fraudulently or improperly made, he may, subject to such rules as may be made by the State Government with respect to the conditions on which and the circumstances in which such entries may be corrected or cancelled correct the error or cancel the entry by suitable entry in the margin, without any alteration of the original entry, and shall sign the marginal entry and add thereto the date of the correction or cancellation."

Rule 11 of the Rules is required to be reproduced verbatim and it is as under :-

> **Rule 11** : **Correction or cancellation of entry in the register of births**

and deaths :

1. If it is reported to the Registrar that a clerical or formal error has been made in the register or if such error is otherwise noticed by him and if the register is in his possession, the Registrar shall inquire into the matter and if he is satisfied that any such error has been made, he shall correct the error (by correcting or canceling the entry) as provided in Section 15 of the Act and shall sent an extract of the entry showing the error and how it has been corrected to the District Registrar of Births and Deaths.

2. In the case referred to in sub rule (1) if the register is not in the possession the Registrar, he/she shall make a report to the District Registrar of Births and Deaths and call for the relevant register and after inquiring into the matter, if he is satisfied that any such error has been made,make the necessary correction.

3. Any such correction as mentioned in sub rule 2 shall be countersigned by the District Registrar of Births and Deaths when the register is received from the Registrar.

4. If any person asserts that any entry in the register of births and deaths is erroneous in substance, the Registrar may correct the entry in the manner prescribed under Section 15 of the Act upon production by that person a declaration setting forth the nature of the error and true facts of the case made by two credible persons having knowledge of the facts of the case.

5. Notwithstanding anything contained in sub-rule (1) and sub-rule (4) the Registrar shall make report of any correction of the kind referred to therein giving necessary details to the District Registrar of Births and Deaths.

6. If it is proved to the satisfaction of the Registrar that any entry in the register of births and deaths has been made fraudulently or improperly, he shall make a report giving necessary details to the officer authorized by the Chief Registrar by general or special order in this behalf under Section 25 of the Act an on hearing from him take necessary action in the matter.

7. In every case in which an entry is corrected or cancelled under this rule, intimation thereof should be sent to the permanent address of the person who has given information under Section 8 or Section 9 of the Act.

3.3. Perusal of notification dated 1st April, 1970 clearly shows that each Talati-cum-village Panchayat Secretary of the Gram Panchayat for the local area comprising the area within the jurisdiction of the respective Gram Panchayat is conferred upon the powers to act as Registrar under the Act. In view of the aforesaid provision, it is clear that upon scrutiny of the relevant material that may be produced by the applicant, the concerned authority is empowered to carry out the necessary correction in the birth register as well as birth certificate. Hence following direction :-

Respondent no. 2 as well as respondent no. 4 are directed to carry out necessary changes, if found necessary and proper, after due scrutiny of the material that may be produced by the petitioner in support of his claim. The petition is, therefore, allowed. Rule is made absolute with no order as to costs.

[Akshay H. Mehta, J.]

* Pansala.